Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1976
No. 76-280

GEORGE B. FORSTER and
DOYLE C. MARSHALL,
on behalf of themselves and
all others similarly situated,

Petitioners,

v.

THE UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No.

GEORGE B. FORSTER and
DOYLE C. MARSHALL,
on behalf of themselves and
all others similarly situated,

Petitioners,

v.

THE UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF CLAIMS

Petitioners pray that a writ of certiorari be issued to review the Order of the United States Court of Claims in this case (No. 181-75) which was entered on May 28, 1976.

OPINION BELOW

The Order of the United States Court of Claims of May 28, 1976, which amended an Order made by the same Court on March 26, 1976 will be reported in 210 Ct. Cl.... Both Orders appear in Appendix A.

JURISDICTION

The Order of the United States Court of Claims was entered on May 28, 1976 and amended an Order made by the same Court on March 26, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1255 (1).

QUESTIONS PRESENTED

1. Whether the statutory exclusion of the Postal Inspectors from application of Title 5 U.S. Code overtime compensation prior to the 1970 postal reorganization, and the statutory exclusions in Title 39 since the 1970 reorganization constitute

an invidious discrimination in violation of the due process clause of the Fifth Amendment to the United States Constitution?

2. Whether Section 755.151 of the U.S. Postal Service Manual which precludes postal inspectors from receiving overtime compensation is a regulation which is violative of the due process clause of the Fifth Amendment?

CONSTITUTIONAL PROVISIONS INVOLVED

AMENDMENT V

> "No person shall***be deprived of life, liberty, or property, without due process of law***."

STATUTES AND REGULATIONS INVOLVED

The statutory and regulatory provisions which are relevant to decision of this case, and the pertinent text of which is set forth in Appendices B - G hereto, are Title 5 of the United States Code, Sections 5541-5549, Title 39 of the

United States Code, Sections 3571 thru 3575, Sections 3541 and 410 and 1003, and Section 755.151 of the U.S. Postal Service Manual.

STATEMENT

Plaintiffs herein, GEORGE B. FORSTER and DOYLE C. MARSHALL, were appointed to the position of postal inspectors in the Post Office Department (POD) on February 16, 1948 and July 3, 1943, respectively. Plaintiff GEORGE B. FORSTER retired on June 30, 1973 from the United States Postal Service (USPS). The United States Postal Service was created via a reorganization of the Post Office Department pursuant to the Postal Reorganization Act of 1970. Plaintiff, DOYLE C. MARSHALL retired from the United States Postal Service on December 29, 1972.

The duties and functions of a postal inspector are described in detail in the

Standard Position Description for Postal Inspector Level C annexed hereto as Appendix H. An accurate summarization of these job responsibilities indicates that the predominant function of a postal inspector is to conduct criminal, civil and administrative investigations of violations of the laws and regulations of the United States pertaining to the U. S. Postal Service.

A brief description of the statutory scheme for the compensation of postal field service employees in the instant case follows:

Prior to the 1970 reorganization of the Post Office Department, Subchapter V, Title 5 United States Code (5 U.S.C. §5441-5449 Supp. III, 1965-67) annexed as Appendix B,prescribed the compensation for overtime hours worked by the majority of employees of executive agencies. The

postal field service, however, of which the postal inspectors are a part, was excluded from the subchapters coverage - see 5 U.S.C. §5541 (c) (vi). Employees of the postal service were compensated pursuant to Chapter 45, Title 39, United States Code (39 U.S.C. §3501, et seq. 1964). Overtime and compensatory time were determined for a number of lower level postal field employees pursuant to 39 U.S.C. §3571, §3573 and §3574. Application of 39 U.S.C. §3575 (a) however, exempted postal office inspectors and others, from the purview of these statutes (Appendix C). Postal inspectors received compensation on the basis of a 48-hour week. 39 U.S.C. §3541 (d) (3) annexed as Appendix D.

The 1970 Postal Reorganization Act had the following effect on the existing statutory scheme, capsulized above:

(a) it repealed the exclusion of the postal field service --- 5 U.S.C. §5541 (c) (vi); yet (b) at the same time it took the United States Postal Service out of the ambit of federal employee laws generally --- including Subchapter 5, Title 5 U.S.C., see 39 U.S.C. §410 (a)(1970)(Appendix E). Although 39 U.S.C. §1003 (a) (1970) empowered the United States Postal Service to fix and classify the rate of compensation for the Postal Service (Appendix F), at the present time the United States Postal Service has maintained the prior statutory dictate of the Post Office Department of a 6 day, 48 hour week and the statutory exclusions relating to entitlement to overtime compensation as regulations. See Postal Manual, Part 755.151 annexed as Appendix G.

Plaintiffs' suit was filed in the Court of Claims on June 2, 1975 pursuant

to 28 U.S.C. 1491. On December 1, 1975, the Defendants moved for summary judgment pursuant to Rule 101 (a) of the Court of Claims. In February 1976 the Court granted Plaintiffs an extension of time in which to file a cross-motion for summary judgment. Both parties filed briefs in March, 1976. On March 26, 1976, the Court of Claims issued an Order granting Defendant's motion for summary judgment and dismissing Plaintiffs' petition. Apparently, the Court of Claims granted Defendant's original motion for summary judgment without the Plaintiffs' opposition to Defendant's motion for summary judgment and Plaintiffs' cross-motion for summary judgment being before them. On May 28, 1976, the same court denied Plaintiffs' motion for reopening, reconsidering and additional time to reply to Defendant. In addition, they amended

their March 26, 1976 Order and denied Plaintiffs' motion for summary judgment, granted Defendant's motion for summary judgment and dismissed Plaintiffs' petition.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted to review the Order of the Court below, as said Order is not in accord with the applicable and dispositive decisions of this Court regarding equal protection of the law. To use this Honorable Court's own words:

> "It would be an idle parade of familiar learning to review the multitudinous cases in which the constitutional assurance of the equal protection of the laws has been applied. The generalities of this subject are not in dispute; their application turns peculiarly on the particular circumstances of a case." Goesaert v. Cleary, 335 U.S. 464, 467 as cited in Safeway Stores v. Oklahoma Grocers, 360 U.S. 334, 339-440 (1958).

Petitioners contend that based upon the unique set of circumstances in the instant case the exclusion of the postal inspectors from application of Title 5 U.S. Code overtime compensation prior to the 1970 postal reorganization, and the statutory exclusions in Title 39 since the 1970 reorganization,constitute an invidious discrimination in violation of the due process clause of the Fifth Amendment of the United States Constitution.

Initially, the Petitioners cite Bolling v. Sharpe, 347 U.S. 497 (1953) as a decision of this Court which grants the equal protection of the law to parties affected solely by federal statutes. In addition, it should be noted that "if a classification would be invalid under the Equal Protection Clause of the Fourteenth Amendment, it

is also inconsistant with the due process requirement of the Fifth Amendment." Johnson v. Robinson, 415 U.S. 361, 364 (1973); see also Richardson v. Belcher, 404 U.S. 78, 81 (1971).

This Court has held that while a state has wide latitude when it comes to drawing classifications (Levy v. Louisiana, 391 U.S. 68, 71) it may not make classifications which are inherently discriminatory and constitute invidious discrimination against any particular group. (Skinner v. Oklahoma, 316 U.S. 535, 541-542.) The test of "invidiousness" has been stated a number of ways, "the end result [however] is whether the line drawn is a rational one." Levy v. Louisiana, supra, see also Morey v. Doud, 354 U.S. 457, 465-466 (1957).

This Court has held for almost a century that "The discriminations which

are open to objection are those where persons engaged in the same business are subjected to different restrictions, or are held entitled to different privileges under the same conditions." Soon Hing v. Crowley, 113 U.S. 703, 709, (1884). A central theme of all prior decisions within this area has been that equal protection of the laws requires equal operation of the laws upon all persons similarly situated. Maxwell v. Bugbee, 250 U.S. 519, 541 (1919).

Petitioners aver that the issue here is not the unique situation of the Post Office bureaucracy as a whole, as the Defendant contended in the Court of Claims, but rather the situation, duties and conditions of postal inspectors in relation to other criminal investigators throughout the federal government. Postal inspectors comprise the criminal/civil investi-

gative branch of the Postal Service and its predecessor the Post Office Department. Their function,in the main, is to conduct criminal, civil and administrative investigations of violations of Federal Law pertaining to the Postal Service. The U.S. Postal Service standard position description for postal inspector, category C level employees, in the section entitled "Duties Performed in Executing the Responsibilities" cites "burglaries of postal facilities, armed robberies of postal personnel, assaults on postal personnel" as some of the types of investigatory work done by postal inspectors. Inspectors in the course of their official duties make arrests, carry firearms, and execute the criminal process of the United States.

The crux of Petitioners' argument and contention of denial of equal protect-

ion is therefore focused on the following issues: What in the nature or course of their (postal inspectors) employment is so special or different as to distinguish them from other Federal Investigators? Petitioners aver that postal inspectors are, in fact, "similarly situated" with other Federal Criminal Investigators. Both postal inspectors and special agents of the Federal Bureau of Investigation make arrests and serve search warrants issued under the authority of the United States. Both postal inspectors and special agents of the United States Secret Service work on non-business hours, seven days a week. Most of the postal inspectors like special agents of the United States Customs Service, work almost exclusively, geographically away from the District of Columbia. Special agents of the United States Customs

Service have similar, extensive contact with the public as do postal inspectors. (Compare, U.S. Postal Service Standard Description, Public Contact and paragraph 5 of Description of Duties and Responsibilities of Custom Service Criminal Investigators - Appendix I). In point of fact, almost every Federal Criminal Investigator performs for his respective agency the same duties and exercises the same powers as do the postal inspectors for the Postal Service.

Therefore, the Petitioners ask on what rational and reasonable basis have they, amongst all the other thousands of Federal Criminal Investigators, been singled out by the Congress of the United States and the United States Postal Service for exemption from overtime pay statutes. Why do other Federal Criminal Investigators receive overtime remuneration

in accordance with Title 5 Overtime Benefits while the postal inspectors are compensated pursuant to the regulations of the United States Parcel Service? The Court has repeatedly held that those similarly situated must be treated similarly at law. The postal inspectors have not been made privy to this constitutional guaranty.

Petitioners contend that any classification of postal inspectors as distinct and apart from other criminal investigators with regard to overtime compensation constitutes invidious discrimination and is thus in violation of their constitutional right to due process as guaranteed them by the Fifth Amendment.

They perform a valuable service for the United States Parcel Service, but they are unquestionably one of the members of the generic class, Federal Criminal In-

vestigators, and yet are denied benefits afforded every other member of the class of federal investigators.

Section 755.151 of the U.S. Postal Service Manual (see appendix) is a 1970 regulatory enactment which precludes postal inspectors from receiving overtime compensation. It is a reiteration of the complained of statutes (see above). Plaintiffs aver that if the Court finds the aforesaid Acts of Congress unconstitutional as being violative of the due process clause of the Fifth Amendment, then logically it must also find this regulation which promulgates an identical end, unconstitutional.

The central question before this Court is whether or not a particular group of postal inspectors may be governed by a set of regulations differing from and unrelated to the Title 5 bene-

fits generally applicable to other agents similarly situated within the penumbra of the Federal Government.

Any claim that Petitioners did, in fact, receive overtime compensation substantially similar to that provided for in Title 5 is specious and irrelevant to the question at hand. Petitioners were paid on the basis of a 48-hour week and admittedly their compensation is 20% above that of an employee paid on a 40-hour week. However, Petitioners worked 48 hours every week whereas other investigators only work a 40 hour basic week. All Petitioners seek is Title 5 compensation for hours worked in excess of the first 48 hours.

Furthermore, the postal salary increase in 1970 of 8% above other Federal employees and the right of postal employees to collectively bargain does not adequately

compensate the Petitioners for their overtime work and should not be used as a subterfuge for equal protection.

The compelling logic upon which Petitioners writ should be granted concerns the mode and manner of payment perforce available to postal inspectors and not upon the basis of ultimate monetary sums. Whether a postal inspector may ultimately take home more money by working greater hours begs the question. Postal inspectors as part of a larger class of other governmental employees engaged in similar work, having similar duties and charged with similar responsibilities may not be excluded from the rights and privileges deemed an essential pre-requisite attendant to the members of that class according to the Fifth Amendment of the United States Constitution.

CONCLUSION

For the reasons aforesaid, it is respectfully prayed that a writ of certiorari be granted to review the Order of the United States Court of Claims.

Respectfully submitted,

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APPENDIX A

APPENDIX "A"

IN THE UNITED STATES COURT OF CLAIMS

No. 181-75

GEORGE B. FORSTER and DOYLE C. MARSHALL, on behalf of themselves and all others similarly situated

v.

THE UNITED STATES

Before DAVIS, Judge, Presiding, SKELTON and KASHIWA, Judges.

ORDER

This case comes before the court on plaintiffs' motion for reopening, reconsideration, and additional time to answer defendant. For the reasons stated below we deny plaintiffs' motion and amend our order in this case of March 26, 1976. This case originally came to us on defendant's motion for summary judgment, filed December 1, 1975. Under Rule 52 (b)(1) a party has 30 days within which to file a cross motion for summary judg-

ment. In February, 1976, the court granted plaintiffs an extension of time. Both parties filed briefs in March, 1976. Plaintiffs' brief presented no new issues and their instant motion does not indicate any. Therefore,

IT IS ORDERED that plaintiffs' motion is denied and the order in this case of March 26, 1976, is amended as follows:

1) The first sentence is deleted and the following sentence is inserted in lieu thereof: This case comes before the court on cross motions for summary judgment.

2) The last sentence is deleted and the following sentence is inserted in lieu thereof: IT IS ORDERED that defendant's motion for summary judgment is granted, plaintiff's motion for summary judgment is denied, and plaintiffs' petition is dismissed.

BY THE COURT

S/Oscar H. Davis

Oscar H. Davis
Judge, Presiding

May 28, 1976

IN THE UNITED STATES COURT OF CLAIMS

No. 181-75

GEORGE B. FORSTER and DOYLE C. MARSHALL, on behalf of themselves and all others similarly situated

v.

THE UNITED STATES

Before DAVIS, Judge, Presiding, SKELTON and KASHIWA, Judges.

ORDER

This case comes before the court on defendant's motion for summary judgment, filed December 1, 1975. Plaintiffs are retired postal inspectors who seek payment for uncompensated overtime. They contend they were denied equal protection because other Civil Service employees are compensated for overtime. Both prior to and subsequent to the Postal Reorganization Act of 1970, postal inspectors were paid on the basis of a 48-hour week

instead of overtime pay.

The postal field service, of which plaintiffs were a part, is properly classified as a separate entity for compensation purposes. It is unique, a fact long recognized by Congress. The exclusion of the postal field service from application of Title 5 premium pay provisions is based upon a reasonable appreciation of this uniqueness. Only an invidious discrimination violates equal protection. Lenhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 359 (1973); Williamson v. Lee Optical, Inc., 348, U.S. 483, 489 (1955). There is no such discrimination here.

IT IS ORDERED that defendant's motion for summary judgment is granted and plaintiff's petition is dismissed.

BY THE COURT

Mar 26 1976

S/Oscar H. Davis

Oscar H. Davis
Judge Presiding

APPENDIX B

SUBCHAPTER V—PREMIUM PAY

§ 5541. Definitions

For the purpose of this subchapter—

(1) "agency" means—

(A) an Executive agency;

(B) a military department;

(C) an agency in the judicial branch;

(D) the Library of Congress;

(E) the Botanic Garden;

(F) the Office of the Architect of the Capitol; and

(G) the government of the District of Columbia; and

(2) "employee" means—

(A) an employee in or under an Executive agency;

(B) an individual employed by the government of the District of Columbia; and

(C) an employee in or under the judicial branch, the Library of Congress, the Botanic Garden, and the Office of the Architect of the Capitol, who occupies a position subject to chapter 51 and subchapter III of chapter 53 of this title;

but does not include—

(i) a justice or judge of the United States;

(ii) the head of an agency other than the government of the District of Columbia;

(iii) a teacher, school official, or employee of the Board of Education of the District of Columbia, whose pay is fixed under chapter 15 of title 31, District of Columbia Code;

(iv) a member of the Metropolitan Police, the Fire Department of the District of Columbia, the United States Park Police, or the White House Police;

(v) a student-employee as defined by section 5351 of this title;

(vi) an employee in the postal field service;

(vii) an employee outside the continental United States or in Alaska who is paid in accordance with local native prevailing wage rates for the area in which employed;

(viii) an employee of the Tennessee Valley Authority;

(ix) an individual to whom section 1291(a) of title 50, appendix, applies;

(x) an employee of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives;

(xi) an employee whose basic pay is fixed and adjusted from time to time in accordance with prevailing rates by a wage board or similar administrative authority serving the same purpose, except as provided by section 5544 of this title;

(xii) an employee of the Transportation Corps of the Army on a vessel operated by the United States, a vessel employee of the Environmental Science Services Administration, a vessel employee of the Department of the Interior, or a vessel employee of the Panama Canal Company; or

(xiii) a "teacher" or an individual holding a "teaching position" as defined by section 901 of title 20.

Pub.L. 89–554, Sept. 6, 1966, 80 Stat. 485; Pub.L. 90–83, § 1(4), Sept. 11, 1967, 81 Stat. 196.

Historical and Revision Notes

Reviser's Notes

Derivations:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 901(a), (d), (e)	June 30, 1945, ch. 212, § 101(a), (d), (e), 59 Stat. 295, 296. Sept. 1, 1954, ch. 1208, § 202(a), 68 Stat. 1109.
	5 U.S.C. 902 (less clause (1) and last sentence of (a))	June 30, 1945, ch. 212, § 102 (less clause (1) and last sentence of (a)), 59 Stat. 296. May 24, 1946, ch. 270, § 8(a), 60 Stat. 218. Aug. 4, 1947, ch. 452, § 1, 61 Stat. 727. Aug. 18, 1959, Pub.L. 86-168, § 202(c), 73 Stat. 389.
	5 U.S.C. 2358(a) (as applicable to the Federal Employees Pay Act of 1945, as amended).	July 17, 1959, Pub.L. 86-91, § 10(a) (as applicable to the Federal Employees Pay Act of 1945, as amended), 73 Stat. 217.

Explanatory Notes.

The section is revised as a definition section. The provisions of former section 901(d) are omitted as unnecessary because the sections referred to state their application and there is no need to restate the application here.

In paragraph (1), the terms "Executive agency" and "military department" are substituted for the references in former section 901(a) and (e) to the executive branch, including Government-owned or controlled corporations, and the General Accounting Office in view of the definitions in sections 105 and 102.

In paragraph (2) (iii), the words "chapter 15 of title 31, District of Columbia Code" are substituted for the reference in former section 902(a) (4) to "the Teachers Salary Act of June 4, 192[illegible], as amended" on authority of the provisions contained therein. Enumeration of the individuals to which the provisions apply are added.

In paragraph (2) (iv), the provisions of former section 902(a) (5) and (b) (6) are combined.

In paragraph (2) (v), the words "student-employee as defined by section 5351 of this title" are coextensive with and substituted for the enumeration of the employees in former section 902(a) (6).

In paragraph (2) (iv), (vi), (vii), (viii), (ix), (xi), and (xii) the reference to former section 947 is omitted as that section was repealed by the Act of Sept. 12, 1950, ch. 946, § 301(85), 64 Stat. 843.

In paragraph (2) (xii), the reference to former section 946 is omitted as unnecessary since that section is not carried into this subchapter. The words "Panama Canal Company" are substituted for "Panama Railroad Company" on authority of the Act of Sept. 2, 1950, ch. 1049, § 2(a) (2), 64 Stat. 1038.

In paragraph (2) (xiii), the words "as defined by section 901 of title 20" are added on authority of former section 2351, which section is scheduled for transfer to section 901 of title 20.

The exception for officers and employees of the Inland Waterways Corporation in former section 902(b) (3) is omitted on authority of the Act of July 19, 1963, Pub. L. 88-67, 77 Stat. 81.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 Amendment. Subsec. (2) (xii), Pub.L. 90-83 substituted "Environmental Science Services Administration" for "Coast and Geodetic Survey." See Reviser's Note under section 2101 of this title.

Cross References

Coast Guard civilian instructors, see section 186 of Title 14, Coast Guard.

Compensation of federal judges, see section 197 of Title 22, Foreign Relations and Intercourse, sections 5, 44, 135, 173, 213, and 252 of Title 28, Judiciary and Judicial Procedure, and section 863 of Title 48, Territories and Insular Possessions.

Compensation of officers and employees of the Tennessee Valley Authority, see sections 831a, 831b of Title 16, Conservation.

Compensation of White House police force, see section 204 of Title 3, The President.

Notes of Decisions

Generally 1
Particular employees 2

Library references
United States ⇐39(4, 5).
C.J.S. United States §§ 17, 46.

1. Generally

The plaintiff, being included by the language of former section 901 et seq. of this title [now this subchapter], which became effective July 1, 1945, was entitled to the benefits of said sections. Barker v. U. S., 1950, 117 Ct.Cl. 221.

2. Particular employees

Specific statute calling for treatment as "vessel employees" of employees, who worked for government-owned corporation which operated Panama Canal and who were paid by the hour for their work aboard floating equipment of the corporation, took precedence over general provisions of Thomas Amendment with the result that employees were not entitled to be compensated for time spent in traveling in company water-borne conveyances over water to and from the floating equipment as regular hours of labor. Panama Canal Co. v. Anderson, C.A.Canal Zone 1963, 312 F.2d 98, certiorari denied 84 S.Ct. 43, 375 U.S. 832, 11 L.Ed. 2d 63.

Panama Canal pilots were entitled to benefit of overtime compensation provisions of this subchapter. Boyd v. Panama Canal Co., D.C.Canal Zone 1954, 199 F.Supp. 50.

§ 5542. Overtime rates; computation

(a) Hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or (with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS–10 for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are

overtime work and shall be paid for, except as otherwise provided by this subchapter, at the following rates:

(1) For an employee whose basic pay is at a rate which does not exceed the minimum rate of basic pay for GS–10, the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of basic pay of the employee, and all that amount is premium pay.

(2) For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS–10, the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of the minimum rate of basic pay for GS–10, and all that amount is premium pay.

(b) For the purpose of this subchapter—

(1) unscheduled overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is deemed at least 2 hours in duration; and

(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless—

(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

(B) the travel involves the performance of work while traveling or is carried out under arduous conditions.

Pub.L. 89–554, Sept. 6, 1966, 80 Stat. 485; Pub.L. 90–83, § 1(24), Sept. 11, 1967, 81 Stat. 200.

Historical and Revision Notes

Reviser's Notes

1966 Act

Derivation:	United States Code	Revised Statutes and Statutes at Large
(a)	5 U.S.C. 911	June 30, 1945, ch. 212, § 201, 59 Stat. 296. Sept. 1, 1954, ch. 1208, § 203, 68 Stat. 1109.
(b)	5 U.S.C. 912a 5 U.S.C. 912b	Sept. 1, 1954, ch. 1208, § 205(b), 68 Stat. 1110.

Explanatory Notes.

In subsection (a) (1) and (2), the word "officer" is omitted as included in "employee". The word "scheduled" is omitted since section 603 of the Act of Oct. 11, 1962, Pub.L. 87-793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. References to the "Classification Act of 1949, as amended" are omitted as unnecessary.

In subsection (b), former sections 912a and 912b are combined and restated.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

Note 11

the regular rate, that in determining overtime compensation of the "foregoing per annum government employees" the pay for one day should be considered to be 1/360 of their respective per annum salaries, did not apply to an employee who was not a per annum employee, and such employee was entitled to be paid "true overtime", computed by multiplying monthly wage by 12 and dividing product by 52 to get weekly wage and then dividing weekly wage by 5 to get the wage per day. Id.

12. Rules and regulations

Civil service commission's regulation requiring agencies to review overtime pay determinations at appropriate intervals and discontinue payments or revise rates where necessary authorized Internal Revenue Service to make regulation calling for quarterly determination of eligibility for premium pay. Fix v. U. S., Ct.Cl.1966, 368 F.2d 609.

Internal Revenue Service regulation requiring quantitative determination of eligibility for premium overtime pay anew each quarter did not clearly contradict terms or purpose of this section. Id.

Administrators of a statute such as this section containing formula for overtime pay of federal employees have some leeway, and their implementing regulations should not be overturned unless clearly wrong. Id.

13. Unenforceable agreements

Even though plaintiff had agreed as a condition to her employment as correctional officer in federal women's reformatory, that she would perform nighttime duty, the agreement to work overtime without pay could not be enforced contrary to provisions of this section limiting work to be performed to 40 hours per week and providing overtime pay for extra duty. Farley v. U. S., 1955, 127 F.Supp. 562, 131 Ct.Cl. 778.

14. Actions to recover overtime compensation

In view of reaffirmation in another case of Court of Claims' general interpretation of this section and of fact that factual record remained the same as when the general interpretation was made, Court of Claims would not reopen to see the record and law differently and hold that much so-called travel by investigators of alcohol and tobacco tax division was compensable work includable as basis of granting extra pay beyond per diem allowed while away from official station. Fix v. U. S., Ct.Cl.1966, 368 F.2d 609.

Absent alteration in governing legal rules or change in the record, holding that retail liquor duty consisting of investigation as to whether retail liquor establishments had proper federal stamps, had paid federal tax, and were complying with federal regulations was compensable to extent that the work was performed during overtime would not be re-examined. Id.

Retired federal civil service employees, who sought overtime compensation for periods during which they acted as duty officers outside their regular work week during employment for Civil Defense Administration, were not entitled to recover for any services performed more than six years preceding dates of filing of petitions, where employees limited their proof and requested findings solely to services allegedly rendered during six-year period immediately preceding filing of respective petitions. Rapp v. U. S., 1964, 340 F.2d 635, 167 Ct.Cl. 852.

Laches is an equitable defense and its application in each case must be considered in the light of the particular facts of the case and the relief being sought, and where a suit for overtime pay under this section is commenced some 10 years after the failure to pay for ordered and approved overtime began, the Government can show no prejudice in the delay. Albright v. U. S., 1963, 161 Ct.Cl. 350.

§ 5543. Compensatory time off

(a) The head of an agency may—

(1) on request of an employee, grant the employee compensatory time off from his scheduled tour of duty instead of payment for an equal amount of time spent in irregular or occasional overtime work; and

(2) provide that an employee whose rate of basic pay is in excess of the maximum rate of basic pay for GS–10 shall be granted compensatory time off from his scheduled tour of duty equal to the amount of time spent in irregular or occasional overtime work instead of being paid for that work under section 5542 of this title.

(b) The Architect of the Capitol may grant an employee paid on an annual basis compensatory time off from duty instead of overtime pay for overtime work. Pub.L. 89–554, Sept. 6, 1966, 80 Stat. 486; Pub.L. 90–83, § 1(25), Sept. 11, 1967, 81 Stat. 200.

Historical and Revision Notes

Reviser's Notes

1966 Act

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 912	June 30, 1945, ch. 212, § 202, 59 Stat. 297. May 24, 1946, ch. 270, § 9, 60 Stat. 218. Sept. 1, 1954, ch. 1208, § 204, 68 Stat. 1109.

In subsection (a), the words "head of an agency" are substituted for "head of any department, independent establishment, or agency, including Government-owned or controlled corporations, or of the municipal government of the District of Columbia, or the head of any legislative or judicial agency to which this subchapter applies" because of the definition of "agency" and the application stated in section 5511.

In subsection (a) (1), the word "officer" is omitted as included in "employee".

In subsection (a) (2), the words "at his own discretion" are omitted as unnecessary in view of the permissive nature of the authority. The word "officer" is omitted as included in "employee". The word "scheduled" is omitted since section 603 of the Act of Oct. 11, 1962, Pub. L. 87–793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. Reference to the "Classification Act of 1949, as amended" is omitted as unnecessary.

In subsection (b), the words "in his discretion" are omitted as unnecessary in view of the permissive nature of the authority. The words "overtime work" are substituted for "any work in excess of forty hours in any regularly scheduled administrative workweek" because of the definition of "overtime work" in section 5542(a).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 Act

Section of title 5	Source (U.S.Code)	Source (Statutes at Large)
5543(a)(2)	5 App.:912	July 18, 1966, Pub.L. 89-504, § 401(b), 80 Stat. 297.

Library References

United States ⇐39(4, 5). C.J.S. United States §§ 17, 46.

§ 5544. Wage-board overtime and Sunday rates; computation

(a) An employee whose basic rate of pay is fixed and adjusted from time to time in accordance with prevailing rates by a wage board or similar administrative authority serving the same purpose is entitled to overtime pay for overtime work in excess of 8 hours a day or 40 hours a week. However, an employee subject to this subsection who regularly is required to remain at or within the confines of his post of duty in excess of 8 hours a day in a standby or on-call status is entitled to overtime pay only for hours of duty, exclusive of eating and sleeping time, in excess of 40 a week. The overtime hourly rate of pay is computed as follows:

(1) If the basic rate of pay of the employee is fixed on a basis other than an annual or monthly basis, multiply the basic hourly rate of pay by not less than one and one-half.

(2) If the basic rate of pay of the employee is fixed on an annual basis, divide the basic annual rate of pay by 2,080, and multiply the quotient by one and one-half.

(3) If the basic rate of pay of the employee is fixed on a monthly basis, multiply the basic monthly rate of pay by 12 to derive a basic annual rate of pay, divide the basic annual rate of pay by 2,080, and multiply the quotient by one and one-half.

An employee subject to this subsection whose regular work schedule includes an 8-hour period of service a part of which is on Sunday is entitled to additional pay at the rate of 25 percent of his hourly rate of basic pay for each hour of work performed during that 8-hour period of service.

(b) An employee under the Office of the Architect of the Capitol who is paid on a daily or hourly basis and who is not subject to chapter 51 and subchapter III of chapter 53 of this title is entitled to overtime pay for overtime work in accordance with subsection (a) of this section. The overtime hourly rate of pay is computed in accordance with subsection (a) (1) of this section. Pub.L. 89–554, Sept. 6, 1966, 80 Stat. 486; Pub.L. 90–83, § 1(26) (A), Sept. 11, 1967, 81 Stat. 200.

Historical and Revision Notes

Reviser's Notes

1966 Act

Derivation:	United States Code	Revised Statutes and Statutes at Large
(a)	5 U.S.C. 673c (2d proviso)	Mar. 28, 1934, ch. 102, § 23 (proviso), 48 Stat. 522. Aug. 13, 1962, Pub.L. 87-381, § 201 (2d proviso), 76 Stat. 360.
	5 U.S.C. 913	June 30, 1945, ch. 212, § 203, 59 Stat. 297. Sept. 1, 1954, ch. 1208, § 205(a), 68 Stat. 1109.
(b)	5 U.S.C. 933 (as applicable to 5 U.S.C. 673c)	June 30, 1945, ch. 212, § 503 (as applicable to § 23 of the Act of Mar. 28, 1934, ch. 102, 48 Stat. 522, as amended), 59 Stat. 301.

17. Evidence

Evidence established that section foreman for the Alaska Railroad owned and operated by the United States and working on a monthly basis had kept his time honestly and accurately with respect to Sunday work. Poggas v. U. S., 1950, 93 F.Supp. 1009, 118 Ct.Cl. 385, 13 Alaska 83, motion denied 96 F.Supp. 609, 118 Ct.Cl. 385.

18. Stare decisis

The decision in the Poggas case, 118 Ct.Cls. 385, in which the Court of Claims reviewed the history of the administration of this section, and the litigation concerning this section in the Court of Claims and the Supreme Court, is reaffirmed. Parmenter v. U. S., 1954, 125 Ct. Cl. 35.

19. Review

Employees in Dredging Division of Panama Canal Company, who have not been paid compensation in accordance with applicable statutes, have recourse to judicial review. Anderson v. Panama Canal Co., D.C.Canal Zone 1961, 194 F. Supp. 765, reversed on other grounds 312 F.2d 98, certiorari denied 84 S.Ct. 43, 375 U.S. 832, 11 L.Ed.2d 63.

Courts cannot exercise generally supervising power over proceedings of administrative department, but failure of department to allow overtime, when authorized by statute, and failure to compensate for hours spent in labor, does not fall within scope of internal agency management that precludes judicial review. Id

§ 5545. Night, Sunday, standby, irregular, and hazardous duty differential

(a) Except as provided by subsection (b) of this section, nightwork is regularly scheduled work between the hours of 6:00 p.m. and 6:00 a.m., and includes—

(1) periods of absence with pay during these hours due to holidays; and

(2) periods of leave with pay during these hours if the periods of leave with pay during a pay period total less than 8 hours.

Except as otherwise provided by subsection (c) of this section, an employee is entitled to pay for nightwork at his rate of basic pay plus premium pay amounting to 10 percent of that basic rate. This subsection and subsection (b) of this section do not modify section 180 of title 31, or other statute authorizing additional pay for nightwork.

(b) The head of an agency may designate a time after 6:00 p.m. and a time before 6:00 a.m. as the beginning and end, respectively, of nightwork for the purpose of subsection (a) of this section, at a post outside the United States where the customary hours of business extend into the hours of nightwork provided by subsection (a) of this section.

(c) The head of an agency, with the approval of the Civil Service Commission, may provide that—

(1) an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for irregular, unscheduled overtime duty in ex-

cess of his regularly scheduled weekly tour. Premium pay under this paragraph is determined as an appropriate percentage, not in excess of 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS–10, by taking into consideration the number of hours of actual work required in the position, the number of hours required in a standby status at or within the confines of the station, the extent to which the duties of the position are made more onerous by night, Sunday, or holiday work, or by being extended over periods of more than 40 hours a week, and other relevant factors; or

(2) an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled, overtime duty and duty at night, on Sundays, and on holidays with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime duty. Premium pay under this paragraph is determined as an appropriate percentage, not in excess of 15 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS–10, by taking into consideration the frequency and duration of night, Sunday, holiday, and unscheduled overtime duty required in the position.

(d) The Commission shall establish a schedule or schedules of pay differentials for irregular or intermittent duty involving unusual physical hardship or hazard. Under such regulations as the Commission may prescribe, and for such minimum periods as it determines appropriate, an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential for any period in which he is subjected to physical hardship or hazard not usually involved in carrying out the duties of his position. However, the pay differential—

(1) does not apply to an employee in a position the classification of which takes into account the degree of physical hardship or hazard involved in the performance of the duties thereof; and

(2) may not exceed an amount equal to 25 percent of the rate of basic pay applicable to the employee.

Pub.L. 89–554, Sept. 6, 1966, 80 Stat. 487; Pub.L. 90–83, § 1(27), Sept. 11, 1967, 81 Stat. 200.

That the 15% premium compensation under this section would often work out to less than straight time for alcohol and tobacco tax investigators did not preclude coverage. Id.

Premium compensation for overtime work by government employee when hours of duty cannot be controlled administratively and regularly scheduled overtime relate to independent, mutually exclusive methods for compensating two distinct forms of overtime work. Burich v. U. S., Ct.Cl.1966, 366 F.2d 984.

Where United States deputy marshal received regular assignments which resulted in erratic and irregular periods of overtime work, his additional duty hours represented administratively uncontrollable overtime rather than regularly scheduled overtime and were compensable by premium payments rather than overtime pay. Id.

Claim by federal deputy marshal for compensation owing for annual leave forfeited due to necessary work and time allowed for sick leave earned but unused did not support claim for overtime compensation. Id.

Where civil service employees of Civil Defense Administration served many of their duty officer tours at night at control center, they were entitled to night pay differential in addition to regular overtime compensation. Rapp v. U. S., 1964, 340 F.2d 635, 167 Ct.Cl. 852.

The removal of investigators of Alcohol and Tobacco Tax Division, Internal Revenue Service, in San Francisco and Omaha regions from purview of this section's provision for 15% premium overtime, while investigators of other seven regions were being compensated under the same Act, was arbitrary and unreasonable in view of established record of overtime performed by such investigators under compulsion of duty and directive. Byrnes v. U. S., 1964, 330 F.2d 986, 163 Ct.Cl. 167.

Investigators whose hours of duty could not be controlled administratively, and whose position required substantial amounts of irregular, unscheduled overtime, night and holiday duty were entitled to annual premium pay of 15% in lieu of overtime. Id.

Where tour of duty of fire fighters at various army posts was sixty hours a week, consisting of two twenty-four-hour shifts and one twelve-hour shift during which they were required to remain at their posts of duty, fire fighters, who were presumed to spend twenty hours of time in eating and sleeping, were not entitled to compensation for more than forty hours per week prior to November 1, 1954 in view of fact that amount of labor performed by them within twenty-hour period was inconsequential. Bean v. U. S., Ct.Cl.1959, 175 F.Supp. 166.

Where federal employee, correctional officer in charge of cottage in which inmates of women's reformatory lived, in addition to 40 hour week had to remain overnight at cottage on alternate nights during which time she was subject to call of individual inmates and to outside telephone calls from officer of the day, hospital and guards, employee was "on duty" and entitled to nighttime differential and overtime pay. Farley v. U. S., 1955, 127 F.Supp. 562, 131 Ct.Cl. 776.

Where an immigration inspector is expected to complete his assignments and such completion can only be accomplished by working overtime, a fact well known by the Immigration Service officials who, as a matter of policy withheld written authorization or approval of such overtime, the inspector has been induced to work overtime and should be paid. Adams v. U. S., 1963, 162 Ct.Cl. 766.

§ 5546. Pay for Sunday and holiday work

(a) An employee who performs work during a regularly scheduled 8-hour period of service which is not overtime work as defined by section 5542(a) of this title a part of which is performed on Sunday is entitled to pay for the entire period of service at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his rate of basic pay.

(b) An employee who performs work on a holiday designated by Federal statute, Executive order, or with respect to an employee of the government of the District of Columbia, by order of the Board of

Commissioners of the District of Columbia, is entitled to pay at the rate of his basic pay, plus premium pay at a rate equal to the rate of his basic pay, for that holiday work which is not—

(1) in excess of 8 hours; or

(2) overtime work as defined by section 5542(a) of this title.

(c) An employee who is required to perform any work on a designated holiday is entitled to pay for at least 2 hours of holiday work.

(d) An employee who performs overtime work as defined by section 5442(a)[1] of this title on a Sunday or a designated holiday is entitled to pay for that overtime work in accordance with section 5542 (a) of this title.

(e) Premium pay under this section is in addition to premium pay which may be due for the same work under section 5545(a) and (b) of this title, providing premium pay for nightwork. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 488; Pub.L. 90-83, § 1(29), Sept. 11, 1967, 81 Stat. 201.

[1] So in original.

Historical and Revision Notes

Reviser's Notes

1966 Act

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 922	June 30, 1945, ch. 212, § 302, 59 Stat. 298. May 24, 1946, ch. 270, § 11, 60 Stat. 218. Sept. 1, 1954, ch. 1208, § 207, 68 Stat. 1110. July 18, 1958, Pub.L. 85-533, 1, § 72 Stat. 377.

Explanatory Notes.

In subsections (a) and (b), the word "officer" is omitted as included in "employee".

In subsections (b) and (c), the word "designated" is substituted for "such a" and "such" in former section 922(b) and (c) to identify the holiday as one designated by statute, Executive order, or the Board of Commissioners of the District of Columbia.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 Act

Section of title 5	Source (U.S.Code)	Source (Statutes at Large)
5546(a)	5 App.: 921a	July 18, 1966, Pub.L. 89-504, § 405(b)(1), (c), 80 Stat. 297.

In subsection (a), the words "An employee who performs • • • work • • • is entitled to pay • • • at the rate of his basic pay" are coextensive with and substituted for "Any • • • service • • • performed • • • shall be compensated • • • at the rate of basic compensation of the officer or employee performing such work." The words "section 5542(a) of this title" are substituted for "section 201 of this Act" to reflect the codification of that section in title 5, United States Code. The words "between midnight Saturday and midnight Sunday" are coextensive with and substituted for "within the period commencing at midnight Saturday and ending at midnight Sunday".

Cross References

Legal public holidays, enumeration of, see section 6103 of this title.

Notes of Decisions

Library references
United States ⇐39(4, 5).
C.J.S. United States §§ 17, 46.

1. Generally

Where employees of the Navy Department were required to perform labor in the District of Columbia on Saturday afternoon, which was a legal holiday in the District of Columbia for all purposes, they were entitled to be paid therefor at the ordinary rate of pay. Adams v. U. S., 1907, 42 Ct.Cl. 191.

Subsection (a) of former section 922 of this title [now this section] precluded double time for holiday work of more than eight hours. 1958, 37 Comp.Gen. 500.

§ 5547. Limitation on premium pay

An employee may be paid premium pay under sections 5542, 5545 (a)–(c), and 5546(a), (b) of this title only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS–15. Pub.L. 89–554, Sept. 6, 1966, 80 Stat. 488; Pub.L. 90–83, § 1(31), Sept. 11, 1967, 81 Stat. 201.

Historical and Revision Notes

Reviser's Notes

1966 Act

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 943	June 30, 1945, ch. 212, § 603, 59 Stat. 302. May 24, 1946, ch. 270, § 7(a), 60 Stat. 218. July 3, 1948, ch. 830, § 303(a), 62 Stat. 1268. Sept. 1, 1954, ch. 1208, § 209, 68 Stat. 1112.

Explanatory Notes.

Former section 943(a), (b) is combined and restated for clarity and conciseness. The word "officer" is omitted as included in "employee". The word "scheduled" is omitted since section 603 of the Act of Oct. 11, 1962, Pub.L. 87-793, 76 Stat. 847, eliminated the necessity of referring to rates as scheduled or longevity. Reference to the "Classification Act of 1949, as amended" is omitted as unnecessary.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 Act

In the codification of 5 U.S.C. 5547, the words "premium pay under this subchapter" were substituted for "premium compensation provided by this Act" appearing in the source statute—section 603 of the Federal Employees Pay Act of 1945, as amended (former 5 U.S.C. 943). This amendment of 5 U.S.C. 5547 is made for clarity and precision of reference and in recognition that the source statutes for certain sections of subchapter V of chapter 55 of title 5 include statutes that were not a part of the Federal Employees Pay Act of 1949. Specifically, 5 U.S.C. 5544(a) is based in part on section 23 (2d proviso) of the act of March 28, 1934, as amended by 76 Stat. 360; and 5 U.S.C. 5545(d) is based on section 801 of the Classification Act of 1949, as added by Public Law 89-512, 80 Stat. 318. Also, 5 U.S.C. 5541(2)(xi) in effect excludes employees subject to 5 U.S.C. 5544 from the operation of 5 U.S.C. 5547.

Library References

United States ⇐39(4, 5). C.J.S. United States §§ 17, 46.

§ 5548. Regulations

(a) The Civil Service Commission may prescribe regulations, subject to the approval of the President, necessary for the administration of this subchapter, except sections 5544 and 5545(d), insofar as this subchapter affects employees in or under an Executive agency.

(b) The Commission shall prescribe regulations necessary for the administration of section 5545(d) of this title. Pub.L. 89–554, Sept. 6, 1966, 80 Stat. 488; Pub.L. 90–83, § 1(32), Sept. 11, 1967, 81 Stat. 201.

Historical and Revision Notes

Reviser's Notes

1966 Act

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 945	June 30, 1945, ch. 212, § 605, 59 Stat. 304.

Explanatory Notes.

The words "an Executive agency" are substituted for "the executive branch of the Government" to conform to the definition in section 105. Applicability of this section to employees of the General Accounting Office is based on former section 933a.

The remainder of the authority is covered by sections 5504 and 6101.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 Act

Section of title 5	Source (U.S.Code)	Sources (Statutes at Large)
5548(b)	5 App.: 1072 (as applicable to 5 App.: 1134). 5 App.: 1134(4) (6th through 9th words).	Oct. 28, 1949, ch. 782, § 1101 (as applicable to § 804, added July 19, 1966, Pub. L. 89-512, § 1, 80 Stat. 318), 63 Stat. 971. July 19, 1966, Pub.L. 89-512, § 1 "Sec. 804(4) (6th through 9th words)", 80 Stat. 318.

This section consolidates into 5 U.S.C. 5548(b) general regulatory authority granted to the Civil Service Commission by section 1101 of the Classification Act of 1949 (as applicable to sec. 804 of that act, added by Public Law 89-512) and the specific requirement in section 804 (4) of that act that the Commission prescribe regulations.

Performance of Functions. Functions vested in Civil Service Commission under this section insofar as it affects officers and employees in or under the executive branch of the government to be performed without approval of President, see section 1(1) of Ex.Ord.No.11228, June 14, 1965, 30 F.R. 7739, set out as a note under section 301 of Title 3, The President.

Notes of Decisions

1. Generally

The regulations issued by the Civil Service Commission, 10 Fed.Reg. 8194, approved by the President, 10 Fed.Reg. 8191, pursuant to former section 945 of this title [now this section] were in accord with said section. Post v. U. S., 1952, 121 Ct.Cl. 94.

§ 5549. Effect on other statutes

This subchapter does not prevent payment for overtime services or for Sunday or holiday work under any of the following statutes—

(1) section 394 of title 7;

(2) sections 1353a and 1353b of title 8;

(3) sections 261, 267, 1450, 1451, 1451a, and 1452 of title 19;

(4) section 382b of title 46; and

(5) section 154(f) (3) of title 47.

However, an employee may not receive premium pay under this subchapter for the same services for which he is paid under one of these statutes. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 488.

Historical and Revision Notes

Reviser's Notes

Derivation:	United States Code	Revised Statutes and Statutes at Large
	5 U.S.C. 941	June 30, 1945, ch. 212, § 601, 59 Stat. 302.

Explanatory Notes.

In paragraph (2), the words "sections 1353a and 1353b of title 8" are substituted for "sections 342c and 342d of this title" to reflect the scheduled transfer of those sections to title 8.

In paragraph (5), the words "section 154(f) (3) of title 47" are substituted for "section 154(f) (2) of title 47" on authority of the Act of July 16, 1952, ch. 879, § 3(b), 66 Stat. 711, which redesignated subsection (f) (2) as (f) (3).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SUBCHAPTER VI—PAYMENT FOR ACCUMULATED AND ACCRUED LEAVE

§ 5551. Lump-sum payment for accumulated and accrued leave on separation

(a) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, who is separated from the service or elects to receive a lump-sum payment for leave under section 5552 of this title, is entitled to receive a lump-sum payment for accumulated and current accrued annual or vacation leave to which he is entitled by statute. The lump-sum payment shall equal the pay the employee or individual would have received had he remained in the service until expiration of the period of the annual or vacation leave, except that it may not exceed pay for a period of annual or vacation leave in excess of 30 days or the number of days carried over to his credit at the beginning of the leave year in which entitlement to payment occurs, whichever is greater. The lump-sum payment is considered pay for taxation purposes only.

(b) The accumulated and current accrued annual leave to which an officer excepted from subchapter I of chapter 63 of this title by

APPENDIX C

HOURS OF WORK AND OVERTIME

§ 3571. Maximum hours of work

Except as otherwise provided in this title, employees may not be required to work more than eight hours a day. The work schedule of employees shall be regulated so that the eight hours of service does not extend over a longer period than ten consecutive hours. Pub.L. 86–682, Sept. 2, 1960, 74 Stat. 651.

Historical and Revision Notes

Based on title 39, U.S.C., 1952 ed., § 1002 (June 10, 1955, ch. 137, § 602, 69 Stat. 125). Section is restated without change.

Cross References

Exemptions to the application of this section, see section 3575 of this title.

§ 3572. Minimum hours of work for hourly rate employees

Each substitute, hourly rate, and temporary employee who reports for duty in compliance with an official order shall be employed for not less than two hours following the hour at which he is ordered to report. Pub.L. 86–682, Sept. 2, 1960, 74 Stat. 651.

Historical and Revision Notes

Based on title 39, U.S.C., 1952 ed., § 1006 (June 10, 1955, ch. 137, § 606, 69 Stat 127). Section 1006 of title 39 is divided. This section covers subsection (b) of section 1006 of title 39. Subsections (a) and (c) of section 1006 are covered by subsections (a) and (b) of section 3302 of this title.

§ 3573. Compensatory time, overtime, and holidays

In emergencies or if the needs of the service require, the Postmaster General may require employees to work more than eight hours in one day, or on Saturdays, Sundays, or holidays. For that service he shall grant employees in the "PFS" Schedule compensatory time or pay them overtime compensation under the following rules:

(1) Each employee in or below salary level PFS–7 shall be paid for all work in excess of eight hours in one day at the rate of 150 per centum of his hourly basic compensation.

(2) (A) Each employee in or below salary level PFS–7 who performs work on Saturdays or Sundays shall, under regulations prescribed by the Postmaster General, be granted compensatory time in an amount equal to the excess time worked within five working days, except that, in lieu of such compensatory time, the Postmaster General may, if the exigencies of the service require, authorize him to be paid, for work performed on Saturdays and Sundays during the month of December, at the rate of 150 per centum of his hourly basic compensation.

(B) If the work performed by such employees on Saturdays and Sundays is less than eight hours, such service, in the discretion of the Postmaster General may be carried forward and combined with similar service performed on other Saturdays and Sundays. The employees may be allowed compensatory time for combined service or any part thereof at any time, except that, whenever at least eight hours of such service has been accumulated, the employees shall be allowed eight hours compensatory time on one day within five working days next succeeding the Saturday or Sunday on which the total accumulated service was at least eight hours.

(3) For time worked on a day referred to as a holiday in section 87b of title 5, or on a day designated by Executive order as a holiday for Federal employees generally, each employee in or below salary level PFS–7, under regulations prescribed by the Postmaster General, shall either be granted compensatory time in an amount equal to the time worked within thirty working days, or be paid premium compensation at a rate equal to his hourly basic compensation for the time so worked. For work performed on Christmas Day, premium compensation shall be paid at a rate equal to 150 per centum of the employee's hourly basic compensation.

(4) Each employee in or above salary level PFS–8 who performs overtime or holiday work as described in this section, under regulations prescribed by the Postmaster General, shall be granted compensatory time in an amount equal to the overtime or holiday work.

(5) If an employee is entitled under this section to unused compensatory time at the time of his death, the Postmaster General shall pay at the rate prescribed in this section, but not less than a sum equal to the employee's hourly basic compensation, for each hour of such unused compensatory time to the person or persons surviving at the date of such employee's death. Such payment shall be made in the order of precedence prescribed in the first section of the Act of August 3, 1950 (5 U.S.C. 61f), and shall be a bar to recovery by any other person of amounts so paid.

Pub.L. 86–682, Sept. 2, 1960, 74 Stat. 651; Pub.L. 87–487, June 19, 1962, 76 Stat. 103.

§ 3574. Night work

Employees who perform work between the hours of 6 o'clock post meridian and 6 o'clock ante meridian standard or daylight saving time, depending upon which time is observed where the work is performed, shall be paid extra compensation for each hour of that work at the rate of 10 per centum of their hourly basic compensation. The differential for night duty is not included in computing overtime compensation to which the employees may be entitled Pub.L. 86–682, Sept. 2, 1960, 74 Stat. 652.

Historical and Revision Notes

Based on title 39, U.S.C., 1952 ed., § 1004 (June 10, 1955, ch. 137, § 604, 69 Stat. 126).

Section is restated without change.

Cross References

Exemptions to the application of this section, see section 3575 of this title.

§ 3575. Exemptions

(a) Sections 3571, 3573 and 3574 of this title do not apply to the heads of regional or district offices and such other employees of the headquarters staff of regional and district offices as the Postmaster General designates, or to postmasters, rural carriers, post office inspectors, traveling mechanicians, and traveling examiners of equipment and supplies.

(b) Sections 3571 and 3573 of this title do not apply to substitute employees and to employees in the Postal Transportation Service and the Motor Vehicle Service assigned to road duty.

(c) Section 3571 of this title does not apply to employees in post offices of the third class.

(d) The provisions of section 3573 of this title relating to compensatory time and overtime compensation for work on Saturdays or Sundays do not apply to hourly rate regular employees and to employees in post offices of the third class. Pub.L. 86–682, Sept. 2, 1960, 74 Stat. 652.

Historical and Revision Notes

Based on title 39, U.S.C., 1952 ed., § 1005 (June 10, 1955, ch. 137, § 605, 69 Stat. 126; Aug. 1, 1956, ch. 842, § 3, 70 Stat. 802).

Section is restated without change.

APPENDIX D

(3) **Organizational relationships.**—Administratively responsible to the Deputy Postmaster General. Directs, through subordinate officials approximately thirty thousand to thirty-five thousand employees in some three thousand offices within the region. Pub.L. 86–682, Sept. 2, 1960, 74 Stat. 644.

Historical and Revision Notes

Based on title 39, U.S.C., 1952 ed., § 963 (June 10, 1955, ch. 137, § 203, 69 Stat. 90).

This section covers paragraph (49) of section 963 of title 39, and brings into one section the key position in level 20. For distribution of section 963, see note to section 3511 of this title.

COMPENSATION AND ALLOWANCES

§ 3541. Pay periods and computation of rates

(a) Employees in the postal field service shall be paid compensation in twenty-six installments. Each installment shall be the compensation for a pay period of two weeks.

(b) As basic compensation for a full pay period, an employee, other than an hourly rate employee, shall be paid an amount equal to one twenty-sixth of his annual basic compensation. As basic compensation for a portion of a pay period, the employee shall be paid basic compensation computed in accordance with subsection (d) of this section for the number of days and hours of service for which he has credit.

(c) As basic compensation for the pay period, an hourly rate employee shall be paid an amount equal to the product of his hourly rate of basic compensation and the number of hours of service for which he has credit.

(d) For purposes of computing rates of compensation other than annual rates the following rules govern:

(1) To compute an hourly rate of basic compensation for employees other than substitute employees, the annual rate of basic compensation shall be divided by 2,080.

(2) To compute an hourly rate of basic compensation for substitute employees, the annual rate of basic compensation shall be divided by 2,016.

(3) To compute the daily rate of compensation for postmasters, postal inspectors, and rural carriers, (other than substitute rural carriers,) the annual rate of compensation shall be divided by 312.

(4) To compute the daily rate of basic compensation for annual rate employees other than postmasters, postal inspectors,

and rural carriers, the hourly rate of basic compensation shall be multiplied by the number of daily hours of service required.

(5) To compute the daily rate of basic compensation for substitute rural carriers, the annual rate of compensation shall be divided by 304.

(e) Except for lump-sum payments for accumulated leave upon the termination of employment, an annual rate employee shall not be paid more than one twenty-sixth of his basic compensation as basic compensation for a pay period.

(f) Rates shall be computed to the nearest cent, counting one-half cent and over as a whole cent.

(g) When a pay period for employees begins in one fiscal year and ends in another, the gross amount of the earnings of such employees for such pay period may be regarded as a charge against the appropriation or allotment current at the end of such pay period. Pub.L. 86–682, Sept. 2, 1960, 74 Stat. 644; Pub.L. 87–646, § 4, Sept. 7, 1962, 76 Stat. 443; Pub.L. 87–793, § 710, Oct. 11, 1962, 76 Stat. 855.

Historical and Revision Notes

Based on title 39, U.S.C., 1952 ed., §§ 974, 1001 (June 10, 1955, ch. 137, § 601, 69 Stat. 125; May 27, 1958, Pub.L. 85–426, Title IV, § 401, 72 Stat. 146.

Section is restated without change. For detailed explanation see pages 36 to 37 of House Report No. 728, 84th Congress, 1st session.

Subsection (h) is based on the part of 39 U.S.C. 974 providing temporary salaries. The remainder is executed.

1962 Amendments. Subsec. (d). Pub.L. 87–793 inserted words "(other than substitute rural carriers,)" in par. (3), and added par. (5).

Subsec. (h). Pub.L. 87–646 repealed former subsec. (h) which related to payment of the temporary rate in lieu of the regular scheduled rate for the period beginning on Jan. 11, 1958, and ending on the last day of the last pay period which begins not more than three years after that date. Subsec. (c) of former section 974 of this title, from which subsec. (h) was derived, was repealed by Pub.L. 86–568, Title I, § 105(a), July 1, 1960, 74 Stat. 297.

Effective Date of 1962 Amendments. Amendment of section by Pub.L. 87–646, effective on Nov. 1, 1962, see section 23(a) of Pub.L. 87–646, set out as a note under section 1 of this title.

Amendment of section by Pub.L. 87–793 effective on the first day of the first pay period which begins on or after Oct. 11, 1962, see section 720 of Pub.L. 87–793, set out as a note under section 3542 of this title.

Short Title. Section 701 of Pub.L. 87–793 provided that: "This title [enacting section 3106 of this title, amending this section and sections 3101, 3301, 3335, 3542, 3543, 3544, 3559, 3560 and 6102 of this title, repealing section 3558 of this title, and enacting provisions set out as notes under this section and sections 3325 3560 of this title, and amending section 1310(a) of Act Nov. 1, 1951, set out as a note under section 43 of Title 5, Executive Departments and Government Officers and Employees] may be cited as the 'Postal Employees Salary Adjustment Act of 1962.'"

Continuation of Orders, Rules, and Regulations. Orders, rules, and regulations in effect under provisions of law superseded or amended by Pub.L. 87-646, to remain in effect, to the extent they would have been authorized under Pub.L. 87-646, until specifically repealed, amended, or revised, see section 22 of Pub.L. 87-646, set out as a note under section 1 of this title.

APPENDIX E

§ 410. Application of other laws

(a) Except as provided by subsection (b) of this section, and except as otherwise provided in this title or insofar as such laws remain in force as rules or regulations of the Postal Service, no Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Postal Service.

(b) The following provisions shall apply to the Postal Service:

(1) section 552 (public information), section 3110 (restrictions on employment of relatives), section 3333 and chapter 71 (employee policies) and 73 (suitability, security, and conduct of employees), and section 5520 (withholding city income or employment taxes), and section 5532 (dual pay) of title 5, except that no regulation issued under such chapters or sections shall apply to the Postal Service unless expressly made applicable;

(2) all provisions of title 18 dealing with the Postal Service, the mails, and officers or employees of the Government of the United States;

(3) section 107 of title 20 (known as the Randolph-Sheppard Act, relating to vending machines operated by the blind);

(4) the following provisions of title 40:

(A) sections 258a–258e (relating to condemnation proceedings);

(B) sections 270a–270e (known as the Miller Act, relating to performance bonds);

(C) sections 276a–276a–7 (known as the Davis-Bacon Act, relating to prevailing wages);

(D) section 276c (relating to wage payments of certain contractors);

(E) chapter 5 (the Contract Work Hours Standards Act); and

(F) chapter 15 (the Government Losses in Shipment Act);

(5) the following provisions of title 41:

(A) sections 35–45 (known as the Walsh-Healey Act, relating to wages and hours);

(B) chapter 6 (the Service Contract Act of 1965); and

(6) sections 2000d, 2000d–1–2000d–4 of title 42 (title VI, the Civil Rights Act of 1964); and

(7) section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668).

(c) Subsection (b)(1) of this section shall not require the disclosure of—

(1) the name or address, past or present, of any postal patron;

(2) information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed;

(3) information prepared for use in connection with the negotiation of collective-bargaining agreements under chapter 12 of this title or minutes of, or notes kept during, negotiating sessions conducted under such chapter;

(4) information prepared for use in connection with proceedings under chapter 36 of this title;

(5) the reports and memoranda of consultants or independent contractors except to the extent that they would be required to be disclosed if prepared within the Postal Service; and

(6) investigatory files, whether or not considered closed, compiled for law enforcement purposes except to the extent available by law to a party other than the Postal Service.

(d) (1) A lease agreement by the Postal Service for rent of not interior space in excess of 6,500 square feet in any building or facility,

or part of a building or facility, to be occupied for purposes of the Postal Service shall include a provision that all laborers and mechanics employed in the construction, modification, alteration, repair, painting, decoration, or other improvement of the building or space covered by the agreement, or improvement at the site of such building or facility, shall be paid wages at not less than those prevailing for similar work in the locality as determined by the Secretary of Labor under section 276a of title 40.

(2) The authority and functions of the Secretary of Labor with respect to labor standards enforcement under Reorganization Plan Numbered 14 of 1950 (title 5, appendix), and regulations for contractors and subcontractors under section 276c of title 40, shall apply to the work under paragraph (1) of this subsection.

(3) Paragraph (2) of this subsection shall not be construed to give the Secretary of Labor authority to direct the cancellation of the lease agreement referred to in paragraph (1) of this subsection.

Pub.L. 91–375, Aug. 12, 1970, 84 Stat. 725, amended Pub.L. 91–656, § 8(a), Jan. 8, 1971, 84 Stat. 1955; Pub.L. 93–340, § 2, July 10, 1974, 88 Stat. 294; Pub.L. 94–82, Title 1, § 101, Aug. 9, 1975, 89 Stat. 419.

References in Text. Section 19 of the Occupational Safety and Health Act of 1970, referred to in subsec. (b)(7) of this section, is section 19 of Pub.L. 91–596 which is classified generally to section 668 of Title 29, Labor. For further classification to this Code, see Codification note under section 668 of Title 29.

1975 Amendment. Subsec. (b)(7). Pub. L. 94–82 added subsec. (b)(7).

1974 Amendment. Subsec. (b)(1). Pub. L. 93-340 inserted "section 5520 (withholding city income or employment taxes)," preceding "and section 5532 (dual pay)".

1971 Amendment. Subsec. (b) (1). Pub.L. 91-656 inserted "section 3110 (restrictions on employment of relatives)," preceding "section 3333" and substituted "no regulation" for "not regulation".

Effective Date of 1974 Amendment. Amendment by Pub.L. 93-340 effective on the 90th day following July 10, 1974, see section 3 of Pub.L. 93-340, set out as a note under section 5520 of Title 5, Government Organization and Employees.

Effective Date of 1971 Amendment. Section 8(b) of Pub.L. 91-656 provided that: "The provisions of this section shall become effective on the effective date prescribed under section 15(a) of the Postal Reorganization Act [set out as a note preceding section 101 of this title] for section 410 of title 39, United States Code, as enacted by that Act [this section]."

Effective Date. Subsecs. (a), (b) (2)-(6), and (c) (1)-(3), (5), (6) of this section effective April 13, 1971, pursuant to Resolution No. 71-14 of the Board of Governors of the U. S. Postal Service, subsecs. (b) (1), relating to section 552 of Title 5, and (c) (4) effective Jan. 20, 1971, pursuant to Resolution No. 71-10 of the Board of Governors of the U. S. Postal Service, and subsec. (d) effective July 1, 1971, pursuant to Resolution No. 71-9 of the Board of Governors. See section 15(a) of Pub.L. 91-375, set out as a note preceding section 101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 91-375, see 1970 U.S.Code Cong. and Adm.News, p. 3649. See, also, Pub.L. 91-656, 1970 U.S. Code Cong. and Adm.News, p. 5915; Pub.L. 93-340, 1974 U.S.Code Cong. and Adm.News, p. 3150.

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1. State laws

Immunity from local zoning ordinances which extends to United States in establishing a post office facility applies whether United States owns the land or leases it. Thanet Corp. v. Board of Adjustment of Princeton, Tp., 1969, 249 A.2d 31, 104 N.J.Super. 180, affirmed 260 A.2d 1, 108 N.J.Super. 65.

Where contractor agreed with federal agency to construct a post office building specifically suited to needs of the agency on land sold and conveyed by agency to contractor and to lease the land and building to such agency by long term lease, with renewal and purchase options at stated rentals and prices, and where no provision was made for payment by agency to contractor of costs or contract price of construction, the agency was not an "owner" of the post office building and contractor was not entitled to sales and use tax exemptions for building and construction materials incorporated therein. Smith Fireproofing Co. v. Donahue, 1968, 237 N.E.2d 300, 14 Ohio St.2d 168.

2. Civil Rights Act

Even if Civil Rights Act, section 1981 et seq. of Title 42, was applicable to Postal Service, which had proposed to remove plaintiff from his position as a letter carrier, plaintiff was not entitled to challenge proposed removal action and to obtain permanent injunction against removal, where he had not yet exhausted his administrative remedies by obtaining an appeal decision on proposed action from Civil Service Commission. Johnson v. Postmaster General, D.C.Md. 1971, 330 F.Supp. 1058.

3. Disclosure

In administrative proceedings within the Postal Service against mail order seller allegedly engaged in false advertising, judicial officer did not err in refusing to order production of the Post Office files relating to the complaint against seller where seller refused to make any specific requests for specific documents and where the file contained, among other things, Inspection Service investigative reports which were exempted from disclosure by subsec. (c) (6) of this section. Institute for Weight Control, Inc. v. Klassen, D.C.N.J.1972, 348 F. Supp. 1304, affirmed 474 F.2d 1338.

APPENDIX F

respect to a person who requests or is under consideration for such appointment, promotion, assignment, transfer, or designation, if—

(1) the statement is furnished pursuant to a request or requirement of the Postal Service and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such person;

(2) the statement relates solely to the character and residence of such person;

(3) the statement is furnished pursuant to a request made by an authorized representative of the Government of the United States solely in order to determine whether such person meets the loyalty, suitability, and character requirements for employment with the Government of the United States; or

(4) the statement is furnished by a former employer of such person pursuant to a request of the Postal Service, and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such person during his employment with such former employer.

(f) The Postal Service shall take any action it determines necessary and proper, including but not limited to suspension, removal from office, or disqualification from the Postal Service, to enforce the provisions of this section.

(g) The provisions of this section shall not affect the right of an officer or employee of the Postal Service to petition Congress as authorized by section 7102 of title 5.

Pub.L. 91–375, Aug. 12, 1970, 84 Stat. 729.

Effective Date. Section effective March 1, 1971, pursuant to Resolution No. 71-13 of the Board of Governors of the U. S. Postal Service. See section 15(c) of Pub. L. 91-375, set out as a note preceding section 101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 91-375, see 1970 U.S.Code Cong. and Adm.News, p. 3649.

§ 1003. Employment policy

(a) Except as provided under chapters 2 and 12 of this title or other provision of law, the Postal Service shall classify and fix the compensation and benefits of all officers and employees in the Postal Service. It shall be the policy of the Postal Service to maintain compensation and benefits for all officers and employees on a standard of comparability to the compensation and benefits paid for comparable levels of work in the private sector of the economy. No officer or employee shall be paid compensation at a rate in excess of the rate for level I of the Executive Schedule under section 5312 of title 5.

(b) The Postal Service shall follow an employment policy designed, without compromising the policy of section 101(a) of this title, to extend opportunity to the disadvantaged and the handicapped.

Pub.L. 91–375, Aug. 12, 1970, 84 Stat. 730.

Effective Date. Section effective Jan. 20, 1971, pursuant to Resolution No. 71-8 of the Board of Governors of the U. S. Postal Service. See section 15(a) of Pub.L. 91-375, set out as a note preceding section 101 of this title.

Compensation of Employees. Section 9 of Pub.L. 91-375 provided that:

"(a) **[Increase in Basic Pay Rate; Effective Date]** The Postmaster General, under regulations made by him, shall increase the rates of basic pay or compensation of employees in the Post Office Department so that such rates will equal, as nearly as practicable, 108 percent of the rates of basic pay or compensation in effect immediately prior to the date of enactment of this Act [Aug. 12, 1970]. Such increases shall take effect on the first day of the first pay period which begins on or after April 16, 1970.

"(b) **[Retroactive Pay]** Retroactive pay, compensation, or salary shall be paid by reason of this Act [see Short Title note preceding section 101 of this title] only in the case of an individual in the service of the United States (including service in the Armed Forces of the United States) on the date of enactment of this Act [Aug. 12, 1970], except that such retroactive pay, compensation, or salary shall be paid—

"(1) to an officer or employee who retired, during the period beginning on the first day of the first pay period which began on or after April 16, 1970, and ending on the date of enactment of this Act [Aug. 12, 1970], for services rendered during such period; and

"(2) in accordance with subchapter VIII of chapter 55 of title 5, United States Code [section 5581 et seq. of Title 5], relating to settlement of accounts, for services rendered, during the period beginning on the first day of the first pay period which began on or after April 16, 1970, and ending on the date of enactment of this Act [Aug. 12, 1970], by an officer or employee who died during such period. Such retroactive pay, compensation, or salary shall not be considered as basic pay for the purposes of subchapter III of chapter 83 of title 5, United States Code [section 8331 et seq. of Title 5], relating to civil service retirement, or any other retirement law or retirement system, in the case of any such retired or deceased officer or employee.

"(c) **[Period for Restoration to Government Position; as Service]** For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Government of the United States.

"(d) **[Group Life Insurance; Amount; Effective Date]** For purposes of determining the amount of insurance for which an individual is eligible under chapter 87 of title 5, United States Code [section 8701 et seq. of Title 5], relating to group life insurance for Government employees, all changes in rates of pay, compensation, and salary which result from the enactment of this section shall be held and considered to become effective as of the date of such enactment [Aug. 12, 1970].

"(e) **[Limitation of Basic Pay Rate]** No rate of basic pay or compensation, in excess of the rate of basic pay for GS-18 of the General Schedule in section 5332 of title 5, United States Code, shall be paid by reason of the enactment of this section."

Provisions of section 9 of Pub.L. 91-375 effective Aug. 12, 1970, see section 15(a) of Pub.L. 91-375, set out as a note preceding section 101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 91-375, see 1970 U.S.Code Cong. and Adm.News, p. 3649.

§ 1004. Supervisory and other managerial organizations

(a) It shall be the policy of the Postal Service to provide compensation, working conditions, and career opportunities that will assure the attraction and retention of qualified and capable supervisory and other managerial personnel; to provide adequate and reasonable differentials in rates of pay between employees in the clerk and carrier grades in the lino work force and supervisory and other managerial personnel; to establish and maintain continuously a program for all such personnel that reflects the essential importance of a well-trained and well-motivated force to improve the effectiveness of postal operations; and to promote the leadership status of such personnel with respect to rank-and-file employees, recognizing that the role of such personnel in primary level management is particularly vital to the process of converting general postal policies into successful postal operations.

(b) The Postal Service shall provide a program for consultation with recognized organizations of supervisory and other managerial personnel who are not subject to collective-bargaining agreements under chapter 12 of this title. Upon presentation of evidence satisfactory to the Postal Service that a supervisory organization represents a majority of supervisors, or that a managerial organization (other than an organization representing supervisors) represents a substantial percentage of managerial employees, such organization or organizations shall be entitled to participate directly in the planning and development of pay policies and schedules, fringe benefit programs, and other programs relating to supervisory and other managerial employees.

Pub.L. 91–375, Aug. 12, 1970, 84 Stat. 731.

Effective Date. Section effective July 1, 1971, pursuant to Resolution No. 71-9 of the Board of Governors. See section 15(a) of Pub.L. 91-375, set out as a note preceding section 101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 91-375, see 1970 U.S.Code Cong. and Adm.News, p. 3649.

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1. Cost of living adjustment

Postal Service decision classifying cost of living adjustment granted postal supervisors as nonbasic pay for retirement purposes was without rational basis. Burns v. U. S. Postal Service, D.C.N.Y. 1974, 380 F.Supp. 623.

2. Equalization payments

Sequence of events in case from 1971 to March 1973 required conclusion that lump-sum equalization payment granted postal supervisors was in reality nothing more than retroactive payment of base pay for work performed during the retroactive period. Burns v. U. S. Postal Service, D.C.N.Y.1974, 380 F.Supp. 623.

APPENDIX G

Part 755

SPECIAL PAY PROVISIONS

755.1 OVERTIME, SUNDAY AND HOLIDAY WORK

.11 OVERTIME WORK

.111 *Definition.* Overtime work is:

a. Work performed in excess of the regular schedule of five 8-hour days in a service week, in the case of annual rate regular employees, when the employee is in pay status for the hours and days in his work schedule.
b. Work performed in excess of 8 hours in a day or 40 hours in a service week in the case of hourly rate regular employees.
c. Work performed in excess of 40 hours in a service week in the case of substitute employees.
d. Periods of paid leave shall be combined with actual work performed to determine overtime work.

.112 *Compensation for Overtime Service*

a. Eligible employees in PFS–11, and below, will be paid for overtime work performed at the rate of 150 percent of the hourly basic rate of compensation derived by dividing the annual rate for his step and level by 2080.
b. Eligible employees in PFS–12 and above will receive compensatory time equal to the overtime worked, in accordance with the provisions of 755.14, except when payment of overtime compensation is specifically authorized by the region or the Department. When authorized, overtime compensation shall be paid at the rate of 150 percent of the hourly basic rate of compensation, or 150 percent of the hourly basic compensation of step 10, PFS–11, whichever is lower.

.12 SUNDAY WORK

.121 Each regular employee whose regular work schedule includes an 8-hour period of service, any part of which is within the period commencing at midnight Saturday and ending at midnight Sunday shall be paid extra compensation at the rate of 25 percent of his hourly rate of basic compensation for each hour of work performed during that 8-hour period of service. An hourly rate regular employee whose regular schedule embraces 40 hours in a service week shall be paid extra compensation at the rate of 25 percent of his hourly rate of basic compensation for scheduled duty (not in excess of 8 hours) any part of which is performed within the period commencing at midnight Saturday and ending at midnight on Sunday.

.122 The Sunday differential shall be paid in addition to any compensation which may be due for performance of work on the holiday when Sunday is the designated holiday of an eligible employee.

.13 HOLIDAY WORK

.131 *Restrictions on Holiday Service*

Holiday employment shall be restricted to essential service. Rural, city or village delivery, including parcel post delivery, shall not be provided. When the holiday falls on a service day for a tri-weekly rural route, the carrier is not required to serve until the next scheduled service day.

.132 *Work Performed on a Holiday*

a. *Holidays other than Christmas*
   (1) When a holiday falls on or is observed on a regularly scheduled workday, an eligible annual rate or hourly rate regular employee in PFS–11 or below who performs service on the holiday shall be paid extra com-

pensation, equal to 100 percent of his hourly basic compensation, for each hour of service, up to 8 hours; work in excess of 8 hours is overtime work, for which compensation is provided in 755.112. Employees in PFS–12 and above will receive compensatory time off, pursuant to 755.14.

(2) When a holiday falls on or is observed on a scheduled day off, the preceding workday shall be designated as the holiday for pay and leave purposes in the case of an eligible annual rate regular employee or an hourly rate regular employee scheduled to perform service on 5 or 6 days a week. For service performed on the designated holiday, each eligible regular employee shall receive compensation in the same manner as for service performed on a holiday falling on a scheduled day.

b. *Christmas Day*

(1) Each eligible regular employee who performs service on Christmas Day, or on a day designated as a holiday in lieu of Christmas Day, shall be paid extra compensation at the rate of 150 percent of his hourly basic compensation for each hour of service performed, up to 8 hours. Service performed in excess of 8 hours is overtime work for which compensation is provided in 755.112.

(2) Each substitute employee who performs service on Christmas Day shall be paid extra compensation at the rate of 50 percent of his hourly basic compensation, computed on the basis of 2,016 hours per annum.

.14 COMPENSATORY TIME FOR EMPLOYEES IN PFS–12 AND ABOVE

Eligible employees in PFS–12 and above who are required to work in excess of 8 hours in any one day, or to perform work on a scheduled day off, or a day observed as a holiday, or a day deemed a holiday for pay and leave purposes, shall be granted compensatory time subject to the following:

a. All work in excess of 8 hours on a day, i.e. overtime, credited for compensatory purposes must be personally approved by the postmaster or employee's immediate superior by initialing the employee's time card. To the extent possible, overtime shall be performed only on prior approval.

b. Overtime of less than 15 minutes on any one day will not be credited for compensatory purposes. Periods of overtime work of less than 15 minutes are to be dropped and are not to be accumulated over the pay period.

c. Compensatory time for work performed on a scheduled day off work shall, as a matter of general practice, be granted within the next 5 working days, except during the month of December. If supervisory coverage will be seriously impaired, however, in the next 5 working days, the period may be extended to 10 working days to allow more latitude in arranging coverage. Holiday compensatory time shall be granted within 30 working days.

d. All time credited for compensatory purposes, not granted under c, shall be granted at the convenience of the Government within 30 days after it is credited. As a general rule, accumulated compensatory time in excess of 24 hours shall be liquidated at a rate of not less than 8 hours per pay period or at a faster rate if necessary to permit granting of compensatory time within 30 days.

.15 EMPLOYEES EXCLUDED FROM SPECIAL PAY

.151 The employees listed below may not receive overtime pay, premium pay, or compensatory time for overtime work or for work performed on Sundays.

a. Postmasters.
b. Postal inspectors.
c. Rural carriers.

APPENDIX "H"

Note: The original material pertinent herein cannot be reduced to comply with the printing requirements of Rule 39 of the Rules of the Supreme Court. Therefore, this appendix is limited to a reproduction of the salient portions of the original documents. These originals are available to the Court upon request.

APPENDIX "H"

U.S. POSTAL SERVICE
STANDARD POSITION DESCRIPTION

JOB TITLE: Postal Inspector (C)

I. Functional Purpose

Conducts difficult criminal, civil and administrative investigations and audit inspections independently as needs become apparent. Assists other postal inspectors in complex investigations and audits as a team member. Coordinates and directs the activites of a small number of assigned postal inspectors and auditors.

II. Responsibility For

1. Public Contact
Has frequent contact with the general public, including witnesses, victims, complainants, suspects and offenders, postal customers, law enforcement agencies, informants, federal attorneys, probation officers, postal personnel, federal, state and local agency personnel, postal contractors.

2. Assets (Facilities/Equipments/ Materials/ Cash)
Exercises protective care and use of facilities and equipment such as vehicles, weapons, office equipment, office supplies, complicated communications and technical equipment. Has, as needed, responsibility for cash advance fund (small).

3. Personnel (omitted in original)

4. Work of Others
Directs the activities of a small number of postal inspectors, auditors and special investigators on occasions. Provides training to new postal inspectors when assigned.

5. Budget (omitted in original)

6. Safety
Exercises a normal regard for the safety of self and others.

III. Duties Performed in Executing the Responsibilities.

1. Investigates violations of postal laws such as burglaries of postal facilities, armed robberies of postal personnel, assault on postal personnel, theft or damage to mail, depredation cases and mail fraud. Develops evidence,locates witnesses and suspects; apprehends and arrests postal offenders; prepares reports to federal attorneys, assists in the preparation of court cases, cooperates with law enforcement and court personnel. Serves as a witness before grand juries and trial courts.

2. Participates in, or personally makes inspections of postal facilities including financial audits, mail processing and delivery activities, time and attendance, work load recording, security, equipment and supply use. Evaluates the results of inspections and prepares needed reports. Makes recommendations to installation management for improvement actions.

3. Analyzes security at postal installations; determines the need for and supervises the installation of alarm systems, provides protection of postal funds and property.

4. Handles a variety of administrative investigations including complaints of loss or mishandling of mail, serious accidents involving postal personnel or nonpostal persons on postal premises. Performs personnel security and suitability investigations. Investigates misconduct of postal employees and presents facts to management for their consideration in disciplinary cases.

5. Provides training for less experienced postal inspectors, auditors, and investigators. Directs the activities of a small group of postal inspectors and auditors when assigned.

6. Installsnew postmasters; acts as counselor to postmasters and other postal officials on law, regulations and instructions.

7. Develops confidential criminal underworld informants.

8. Performs involved studies and investigations throughout the division.

IV. Requirements for Position

1. Discipline Acquired through Formal Schooling or Training
College level understanding of general subject matter. Successful completion of a postal inspector basic training course.

2. Experience
Extensive experience in investigation and apprehension techniques; postal operations; auditing procedures; court and criminal rules and procedures.

3. Physical Requirements
Physically able to work long and irregular hours.

4. Other Desirable Characteristics and Skills
Well-developed human relations and communications skills.

V. Normal Working Conditions

Primarily field work in and about postal facilities; frequently in undesirable neighborhoods and in adverse, hazardous and sometimes arduous situations, subject to duty at all times.

VI. Degree of Direction or Supervision Required

Diversified procedures and standards governed by clearly defined policies and specific objectives subject to management review.

VII. Normally Supervised By

Assistant Postal Inspector-in-Charge

APPENDIX "I"

Note: The original material pertinent herein cannot be reduced to comply with the printing requirements of Rule 39 of the Rules of Supreme Court. Therefore, this appendix is limited to a reproduction of the salient portions of the original documents. These originals are available to the Court upon request.

APPENDIX "I"

A current position description of a Criminal Investigator (special agent) of the U. S. Customs Service General Schedule (GS)-1811:

Page 2:

Last paragraph. Add: This position is designated as sensitive.

This position is that of criminal investigator in Customs Agency Service District, supervision of a supervisory criminal investigator of a specialized investigative group.

Investigations conducted include criminal investigations arising from the enforcement of the Tariff Act and related laws and regulations promulgated in connection therewith within the enforcement jurisdiction of the Customs Agency Service, such as smuggling of narcotics, diamonds, watch movements, jewelry and miscellaneous merchandise; violations of the Export Control Act; Gold Reserve Act relating to unlawful importation or exportation of gold; and that post of the Mutual Security Act pertaining to illegal exportation of arms, munitions and implements of war. Other investigations include market value; cost of production; classification fraud resulting from false invoicing and undervaluation; establishment or amendment of drawback rates; verification of drawback claims under existing rates; fraud in drawback claims; thefts, pilferages and shortages; marking of merchandise; trade marks and

copyrights; irregular delivery; violations of navigation laws pertaining to documentation, ownership and trade of vessels under the laws of the United States; security investigations under S.O. 10450; qualifications and fitness investigations of applicants for positions in the Customs Service; personnel derelictions; Federal Tort Claim Act cases; licensing of customhouse brokers, cartmen and lightermen, as well as examination of their records and complaints against them; irregular deliveries of imported merchandise; collection of duties and penalties; petitions for remission or mitigation in relation to the foregoing classes; conspiracies to violate the laws mentioned above, and such other specialized investigations as may be assigned by the Bureau of Customs.

Under very general technical and administrative supervision of a supervisory criminal investigator in charge of a specialized investigative group, incumbant with a high degree of individual responsibility is assigned a variety of the most difficult investigations requiring specialized training and experience with wide latitude for use of independant judgment, initiative, discretion and resourcefulness. Investigations are conducted personally or with assistance of agents of lower grade. Supervisor provides any special instructions and background information as required, and also provides guidance on policies and procedures of the Bureau of Customs and the principal field officer. Incumbent independently completes all assignments and reports directly to supervisor.

Incumbent may be assigned as required to act in charge of a specialized investigative group during the absence of the supervisory criminal investigator, requiring ability to supervise persons engaged in investigative work, and ability to administer an investigative activity.

Confers with collectors, appraisers, United States attorneys, Federal judges, law enforcement officers, importers, exporters, attorneys, customhouse brokers, and others engaged in foreign commerce, representatives of foreign governments, officers of large corporations, public utilities, railroads, steamship lines and airplane companies, as well as customs employees, hotel officials, seamen, defendants, informers and others as required in connection with this work.

Authorized to administer oaths, conduct formal hearings, make searches and seizures, arrest persons, carry weapons and operate motor vehicles.

No. 76-280

Supreme Court, U. S.
FILED
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In the Supreme Court of the United States

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GEORGE B. FORSTER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This suit was brought in the Court of Claims by retired postal inspectors seeking payment for uncompensated overtime work. They contend that the federal statutes governing overtime compensation establish an irrational classification: while other civil service employees are paid extra compensation for work in excess of 40 hours per week (see 5 U.S.C. 5542), postal inspectors have long been paid on the basis of a 48-hour week. See 5 U.S.C. (1964 ed., Supp. II) 5541(2)(vi); 39 U.S.C. (1964 ed.) 3541 (d)(3); 39 U.S.C. 1005(f); U.S. Postal Service Manual §755.151. This long-standing difference in treatment, petitioners contend, "constitute[s] an invidious discrimination in violation of the due process clause of the Fifth Amendment" (Pet. 10).

The Court of Claims correctly rejected petitioners' constitutional claim, both initially on the government's motion for summary judgment (Pet. App. A3-A4) and

subsequently on petitioners' motion for reopening and reconsideration (Pet. App. A1-A2). No further review is warranted.

The postal field service, of which petitioners were a part, is unique. Many of the positions in the postal field service (*e.g.*, mail handlers, special delivery messengers, transfer clerks, postal inspectors, and postmasters) have little relationship to the positions in other executive agencies. Postal service business continues seven days a week, and many employees must work non-business hours if mail service is to be efficient. With the 1970 reorganization, creating the Postal Service as an "independent establishment of the executive branch" (39 U.S.C. 201), the pay of postal employees was increased by eight percent, in addition to the government-wide increase of six percent. H.R. Rep. No. 91-1104, 91st Cong., 2d Sess. 2, 9, 11 (1970). Employees were also given the opportunity for faster promotion. *Id.* at 9-10. Labor-management relations were made subject to the National Labor Relations Act, with binding arbitration provided for in the event of a bargaining impasse. *Id.* at 2, 8, 10, 14-15. These and other differences make it clear that the hours, rights, and functions of postal field service employees are quite different from those of other civil service employees.

Although the duties of postal inspectors may be similar in some respects to the duties of other federal criminal investigators, it does not follow that the terms and conditions of employment for all such personnel must be identical. As the Court of Claims correctly held (Pet. App. A4):

> The postal field service * * * is properly classified as a separate entity for compensation purposes. It is unique, a fact long recognized by Congress. The exclusion of the postal field service from application of Title 5 premium pay provisions is

> based upon a reasonable appreciation of this uniqueness. Only an invidious discrimination violates equal protection. *Lenhausen* v. *Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973); *Williamson* v. *Lee Optical, Inc.*, 348 U.S. 483, 489 (1955). There is no such discrimination here.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1976.

DOJ-1976-10